



June 24, 2004

*Via Electronic Comment Filing System*

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Room TW-A325  
Washington, DC 20554

Re: CC Docket No. 96-45  
Supplemented Petitions for Eligible Telecommunications Carrier  
Designations  
Written *Ex Parte* Comments of Dobson Cellular Systems, Inc.

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, Dobson Cellular Systems, Inc., on behalf of itself and as manager of American Cellular Corporation ("Dobson"), hereby submits this *ex parte* presentation in response to certain comments filed on eligible telecommunications carrier ("ETC") designation petitions currently pending before the Commission.<sup>1</sup> Specifically, contrary to several commenters' arguments, the law and sound policy require the Commission to process pending ETC petitions under the valid, existing standards.<sup>2</sup> Also, Dobson believes it would be grossly inappropriate for the Commission to consider the cumulative impact of competitive ETC designations on the size of the universal service fund in light of the enormous share of the fund that has been and continues to be paid to incumbents, including recent fund increases further flowing to these incumbents.

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<sup>1</sup> See *Parties Are Invited to Comment on Supplemented Petitions for Eligible Telecommunications Carrier Designations*, CC Docket No. 96-45, *Public Notice*, DA 04-998 (rel. Apr. 12, 2004) ("*April 12 Public Notice*"). In accordance with Sections 1.1206(b) and 1.49(f), Dobson is simultaneously providing notification of this written *ex parte* presentation electronically.

<sup>2</sup> In addition, some commenters used the opportunity afforded by the *April 12 Public Notice* to advance opinions on matters well beyond the scope of the ETC petitions at issue. See Nextel Partners' Reply to Opposition of Verizon in CC Docket No. 96-45, at 4-5 (filed May 14, 2004) ("Nextel Partners' Reply") (noting that contrary to the purpose of the *April 12 Public Notice*, Verizon "did not offer any analysis ... that can be used to evaluate, on a case-by-case basis" the individual ETC petitions).

*Universal Service Reform*

Commenters have raised issues related to universal service reform that presently are being addressed by the Commission in the Joint Board proceeding<sup>3</sup> as a basis for urging delay in current FCC determinations on the pending ETC petitions.<sup>4</sup> The FCC should reject any arguments that existing ETC petitions should not be processed promptly. The FCC has valid designation rules in place, and the statute requires designation of competitive ETCs if the requirements of these rules are met. Specifically, the current laws and precedent governing designation allow for petitions to be granted as long as the ETC providing the required services meets the stringent public interest test.<sup>5</sup> Further delay in processing pending ETC petitions would thus be contrary to law, and use of the Joint Board proceeding to advocate delay is “an improper attempt to advance [] flawed arguments for USF reform.”<sup>6</sup> Similarly, issues of funding are properly addressed in the Joint Board proceeding and not as part of FCC consideration of individual ETC petitions.<sup>7</sup>

Delay of the pending ETC petitions also would not serve the public interest. As the Commission has noted several times, wireless ETCs offer unique benefits to the public due to the mobile nature of their service offerings, broader calling areas and divergent calling plans.<sup>8</sup> Furthermore, the Commission has committed to resolving ETC designation petitions in a six-month time frame, stating that “excessive delay in the designation of competing providers may

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<sup>3</sup> *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Notice of Proposed Rulemaking*, FCC 04-127 (rel. June 8, 2004).

<sup>4</sup> See, e.g., Comments of the Alabama Rural Local Exchange Carriers to the Supplement of Corr Wireless Communications, LLC in CC Docket No. 96-45, at 2-3 (filed May 28, 2004) (“ARLEC Comments”); Comments of Gulf Telephone Company to the Supplement of AT&T Wireless Services, Inc. in CC Docket No. 96-45, at 1-2 (filed May 28, 2004).

<sup>5</sup> 47 U.S.C. § 214(e)(6); 47 C.F.R. § 54.101(a); *Federal-State Joint Board on Universal Service; Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, 19 FCC Rcd 1563, ¶¶ 26-35 (2004) (“*Virginia Cellular*”) (establishing public interest criteria); *Federal-State Joint Board on Universal Service; Highland Cellular, Inc., Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, *Memorandum Opinion and Order*, FCC 04-37, ¶¶ 20-33 (rel. Apr. 12, 2004) (“*Highland Cellular*”) (elaborating on public interest requirements). See also *Highland Cellular* at ¶ 4 (“While we await a recommended decision from the Joint Board, we acknowledge the need for a more stringent public interest analysis for ETC designations in rural telephone company service areas.”).

<sup>6</sup> Nextel Partners’ Reply at 4-5.

<sup>7</sup> See *id.* at 5 (“The Commission has made it clear that, apart from these individualized public interest determinations, the larger issue of how to manage the growth of the fund in light of the addition of new competitive ETCs is a matter relegated in the first instance to the Joint Board process.”); see also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Recommended Decision*, 19 FCC Rcd 4257 (2004).

<sup>8</sup> *Virginia Cellular* at ¶ 20; *Highland Cellular* at ¶ 23.

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hinder the development of competition and the availability of service in many high-cost areas.”<sup>9</sup> Several of the pending ETC petitions already have been delayed far beyond six months.<sup>10</sup> The Commission was fully aware of the outstanding policy issues relating to ETC designations when it adopted *Virginia Cellular* and *Highland Cellular*. In these proceedings, the Commission set forth more stringent public interest criteria for ETC designation, and therefore there is no reason to not move forward under the already exacting requirements for ETC designation. If the Commission felt it needed or had the authority to delay action on ETC petitions, it would have done so in *Virginia Cellular* or *Highland Cellular*.<sup>11</sup>

### *Size of the Universal Service Fund*

Some commenters express concern about the cumulative impact of these ETC designations on the size of the fund.<sup>12</sup> In fact, however, the growth in the high-cost fund largely can be attributed to rural incumbent local exchange carriers (“rural ILECs”). As CTIA argued, wireless ETCs received less than \$1.5 *million* in high-cost universal service support in 2000, in contrast to the nearly \$2.03 *billion* in high-cost funding given to rural ILECs.<sup>13</sup> The funds given

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<sup>9</sup> *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved Areas and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, *Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208, 12255-56 (2000).

<sup>10</sup> Nextel Partners’ Reply at 7-8.

<sup>11</sup> See *Virginia Cellular* at ¶ 12 (“Finally, we note that the outcome of the Commission’s pending proceeding before the Joint Board examining the rules relating to high-cost universal service support in competitive areas could potentially impact the support that Virginia Cellular and other ETCs may receive in the future. This Order is not intended to prejudge the outcome of that proceeding.”) (citations omitted); *Highland Cellular* at ¶ 3 (“Some commenters in [the ongoing Joint Board] proceeding have raised concerns about the rapid growth of high-cost universal service support and the impact of such growth on consumers in rural areas. The outcome of that proceeding could potentially impact, among other things, the support that Highland Cellular and other competitive ETCs may receive in the future and the criteria used for continued eligibility to receive support.”); see also Nextel Partners’ Reply at 8 (“Thus, it is clear that in the *Virginia Cellular Order* the Commission rejected the approach now advanced by Verizon that consideration of pending ETC applications be held in abeyance indefinitely while matters of policy and law such as the issues contained in the Commission’s Portability Proceeding are ultimately worked out. Rather, the Commission adopted standards that allow it to move forward to decision on pending ETC petitions, while acknowledging that those standards are subject to amendment by future Commission actions.”).

<sup>12</sup> Verizon states that if all the pending applications were granted by the FCC and the states, these designations “could increase the size of the rural universal service high costs by approximately \$376 million per year.” Opposition of Verizon in CC Docket No. 96-45, at 3 (filed May 7, 2004) (“Verizon Opposition”) (citation omitted). Additionally, competitive ETCs “would capture up to \$112 million in non-rural, CALLS-based high cost support.” *Id.* See also ARLEC Comments at 6-7 (“[T]he existence of five ETC proceedings — two granted and three pending, in Alabama deserves considerable attention. Each one should not be viewed in isolation. The Commission should defer decision on all pending Alabama ETC Petitions ... until it issues a final rule establishing a framework for determining the ‘overall impact’ on the Fund ...”).

<sup>13</sup> Reply Comments of CTIA — The Wireless Association in CC Docket No. 96-45, at 3 (filed May 14, 2004) (“CTIA Reply Comments”).

to rural ILECs have increased over \$1 billion in the last three years, with ILECs receiving approximately \$3.17 billion in 2003. Funds given to wireless ETCs only rose to approximately \$125 million by 2003.<sup>14</sup> Increases to the amount of high-cost funding paid out “are due in much greater part to the growth in ILEC support, growth that is disproportionately funded by the increases in wireless carrier contributions.”<sup>15</sup> It is thus disingenuous to suggest that wireless ETC designations are leading to significant expansion of the fund, and entirely wrong to use this faulty premise as a basis for urging delay or denial of wireless ETC petitions that otherwise meet FCC requirements.

Even with the relatively minor yet increased costs resulting from competitive ETC designations, such concerns are irrelevant to the pending ETC petitions and should be addressed elsewhere and in conjunction with the much greater growth of the fund attributable to the rural ILECs. As appropriately noted, “[c]oncern for the amount of universal service funding has not been adopted by the Joint Board and the Commission as among the universal service principles on which to base decisions in contested ETC designation cases.”<sup>16</sup> In *Virginia Cellular*, the FCC only took into consideration Virginia Cellular’s *individual* grant when deciding the impact of the grant on the entire universal service fund. The FCC concluded that even if Virginia Cellular “capture[d] each and every customer located in the five affected rural study areas, the overall size of the high-cost support mechanisms would not significantly increase” because the total amount of support available in those five rural study areas is only approximately 0.105% of the total high-cost available to all ETCs.<sup>17</sup> Notably, the Commission in *Virginia Cellular* did not find it necessary to assess the impact that *all* pending ETC applications *may* have on the overall size of the fund.<sup>18</sup> More importantly, as revealed in fine print at the end of the data submitted by Verizon purporting to indicate the funding impact of currently pending petitions, the “projections of costs to the USF are based on the assumptions that *all* pending ETC applicants will be granted designation and will upon designation capture *every single customer* in their respective designated area.”<sup>19</sup> Because this assumption is unlikely to be correct, the actual impact is likely to be far lower than the projection.

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* While wireline companies receive 96 percent of the high-cost funds, wireless carriers contribute about 32 percent to universal service. *Id.*

<sup>16</sup> Response to Opposition of Verizon of N.E. Colorado Cellular, Inc., Midwest Wireless Holdings L.L.C., Rural Cellular Corporation and U.S. Cellular Corporation in CC Docket No. 96-45, at 3 (filed May 14, 2004) (citation omitted).

<sup>17</sup> *Virginia Cellular* at n.96.

<sup>18</sup> *Id.* at ¶ 4.

<sup>19</sup> Nextel Partners’ Reply at 2-3 (emphasis in original). See Verizon Opposition, Attachment B, p. 12 (stating that to calculate the amount of additional high-cost funding that may be needed if the pending ETC petitions are granted, it used the entire value of the high-cost funding available in each study area, including the amount available for the rural LECs).

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Finally, it would not be competitively neutral to base individual ETC designation decisions on the cumulative effect that all wireless ETCs may have on universal service support. As noted by CTIA, the Commission does not assess the amount of high-cost support given to all ILECs prior to allocating funds to an individual ILEC.<sup>20</sup> Delaying ETC designations would deny carriers competitive entry as an ETC while ILECs continue to draw on the universal service fund.<sup>21</sup>

The goal of the 1996 Act was to introduce competition into local telecommunications markets, including in areas that receive universal service support. A relatively modest rise in support to competitive carriers is an expected consequence of Congress's decision, not a cause for alarm. The rise in funding for competitive ETCs should be viewed as a sign of the Joint Board's and the Commission's success in achieving Congressional goals.

The Commission and the states have stringent standards in place for the consideration of ETC petitions, standards that have been tightened as a result of *Virginia Cellular* and *Highland Cellular*. There is no legal or policy justification not to continue applying these standards to the pending petitions during the consideration of the current Joint Board proceeding. Any consideration of the cumulative impact of designations on the fund must take account of the enormous increases in funding that incumbents have received in recent years, and the overwhelming majority of funding that they receive.

Sincerely,



Thomas A. Coates  
Vice President, Corporate Development

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<sup>20</sup> CTIA Reply Comments at 4.

<sup>21</sup> See Reply Comments of ALLTEL Communications, Inc. in CC Docket No. 96-45, at 13-14 (filed May 14, 2004) (“[A]ny delay or denial of these Petitions premised upon the universal service and ETC designation policy grounds raised by the Oppositions would violate ‘the Commission’s responsibility to assure comparable treatment of similarly situated parties.’ [F]urther delay of review of the Petitions would violate the universal service principle of competitive neutrality.”) (citation omitted).

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cc: Christopher Libertelli  
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